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Before the Utah Radiation Control Board

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In re: EnergySolutions, LLC  
(EnergySolutions)

Address: 423 West 300 South, Suite 200  
Salt Lake City, UT 84101

License No. UT 2300249

**NOTICE OF AGENCY ACTION  
TO CONSIDER PROPOSED  
LICENSE CONDITION NO. 35**

The Utah Radiation Control Board is initiating a proceeding in order to determine whether to adopt the license condition included as Attachment A to this notice. This proceeding will be conducted using formal adjudicative proceedings.

EnergySolutions must file a written response to this Notice of Agency Action within 30 days of this date, as required by Utah Code Ann. § 63G-4-201(2)(vi). Please be aware that the Board is simultaneously seeking public comment on this matter. The deadline for public comment will end 30 days after public notice.

You will be notified before any hearing set for this matter.

The Board is considering adopting this license condition pursuant to its authority under Utah Code Ann. § 19-3-103.5. See also R313-19-61.

The question to be considered in the course of this proceeding is whether to adopt the license condition included as Attachment A to this notice.

Please address any correspondence in this matter to the Board's Executive Secretary and the Board's attorney:

Dane Finerfrock, Executive Secretary  
Utah Radiation Control Board  
Division of Radiation Control

(Hand delivery)  
Building No. 2, Room 212  
168 North 1950 West  
Box 144850  
Salt Lake City UT 84116-3085

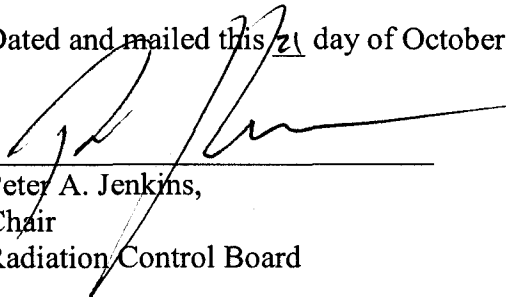
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Laura Lockhart  
Utah Attorney General's Office

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Salt Lake City UT 84111

(U.S. Mail address)  
PO Box 140873  
Salt Lake City UT 84114-0873

Dated and mailed this 21 day of October, 2009.



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Peter A. Jenkins,  
Chair  
Radiation Control Board

## ATTACHMENT A

### Condition 35. Depleted Uranium:

- A. Background: The Nuclear Regulatory Commission (NRC) has acknowledged some inadequacies in its past analyses and possibly its current regulatory structure with respect to disposal of substantial quantities of depleted uranium (DU). As a result, it has started a rulemaking process to determine the conditions under which DU and other unique wastes may be safely disposed of in near surface facilities. NRC has stated that new regulatory standards and guidance will be the likely result from that rulemaking process, and that new performance assessments will likely also be required. Rulemaking by the Division of Radiation Control (DRC) would also likely be follow. EnergySolutions has indicated to the Division that it would prefer not to wait until the completion of the NRC's and DRC's rulemaking processes or until completion of the resulting performance analysis that will likely be required before it begins to dispose of depleted uranium at the Clive facility. The additional license conditions in this Condition 35 are therefore required.
- B. Burial Depth: The Licensee shall place all wastes with DU concentrations greater than 5 percent (by weight) a minimum of 10 feet below the top of the cover.
- C. Performance assessment: A performance assessment, in general conformance with the approach used by the Nuclear Regulatory Commission (NRC) in SECY-08-0147, shall be submitted for Executive Secretary review and be approved prior to receipt of significant quantities (more than 1 metric ton) of DU waste. The performance assessment shall be revised as needed to reflect ongoing guidance and rulemaking from NRC. For purposes of this performance assessment, the compliance period will be a minimum of 10,000 years. Additional simulations will be performed for a minimum of a 1,000,000-year time frame for qualitative analysis.
- D. Revised disposal embankment design: If the performance assessment specified in paragraph 35C indicates that changes to disposal operations and cover design are necessary to ensure compliance with the requirements of 10 CFR Part 61 or Utah Administrative Code R313, EnergySolutions will provide a revised design that does meet those requirements, for all wastes that have been and are reasonably anticipated to be disposed of at the facility, within 180 days of Executive Secretary approval of the performance assessment.
- E. Remediation: If, following the completion of NRC's and DRC's regulatory processes described in paragraph 35A, the disposal of DU as performed after the date of this license condition would not have met the requirements of those new regulatory and performance standards, the facility will undertake remediation to ensure that those new regulatory and performance standards are met, or, if that is

not possible, shall remove the DU and transport it off-site to licensed facility. Before accepting significant quantities of DU for disposal after the effective date of this license condition, EnergySolutions shall provide evidence that it is feasible to meet this condition. Compliance with this provision is required even if EnergySolutions has complied with paragraph 35D.

- F. Surety: The Licensee shall fund the surety for the remediation specified in License Condition 35 E. Within 30-days of the effective date of this license condition, the licensee shall submit for Executive Secretary review and approval, the surety cost estimates for remediation of existing Savannah River DU waste disposal and planned, similar, large quantity DU waste disposal.